

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

REGINA L. WILSON
Claimant

VS.

HCA WESLEY MEDICAL CENTER
Respondent
Self-Insured

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Docket No. 196,875

ORDER

Respondent appealed from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on April 24, 1996.

ISSUES

Respondent raised the following issues in its brief to the Appeals Board:

- (1) Whether claimant's current need for medical treatment arises out of and in the course of her employment with the respondent.
- (2) Whether the Administrative Law Judge exceeded her authority in authorizing Anthony G. A. Pollock, M.D., to perform the CARTICEL autologous chondrocyte implantation procedure.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the file of the Administrative Law Judge and considering the arguments of the parties contained in their briefs, the Appeals Board finds as follows:

- (1) The first issue raised by the respondent is a jurisdictional issue set forth in K.S.A. 44-534a, as amended by S.B. 649 (1996), that grants Appeals Board review of a preliminary hearing order.

Respondent admits that claimant injured her left knee while employed by the respondent on May 11, 1992. Respondent voluntarily provided medical treatment for claimant's left knee injury primarily through Duane A. Murphy, M.D., an orthopedic surgeon in Wichita, Kansas. After claimant did not respond to conservative treatment, Dr. Murphy performed arthroscopic surgery on claimant's left knee on December 22, 1994. He found what he characterized as a devastating knee injury. Because claimant's condition worsened, Dr. Murphy proposed to refer claimant to another physician in his orthopedic group for an evaluation in reference to a total knee replacement. At that time, respondent notified Dr. Murphy that he was no longer authorized to treat the claimant.

Claimant promptly filed an Application for Preliminary Hearing which was held before the Administrative Law Judge on March 7, 1995. Claimant requested temporary total disability weekly benefits for the time when she was off work because of the December 1994 surgery and asked the Administrative Law Judge to authorize Dr. Murphy as her treating physician. Respondent, on the other hand, argued that claimant's present need for medical treatment for her left knee was due to intervening events that had occurred subsequent to her work-related accident of May 11, 1992. That is the same issue the respondent now raises in reference to the Administrative Law Judge's preliminary hearing Order that is the subject of this appeal. The Administrative Law Judge disagreed with the respondent. In an Order dated March 16, 1995, the Administrative Law Judge ordered the respondent to pay temporary total weekly disability benefits and authorized Dr. Murphy as claimant's treating physician. Respondent did not appeal from that Order.

The preliminary hearing Order that is the subject of this appeal is the result of Dr. Murphy referring the claimant in January 1996 to Anthony G. A. Pollock, M.D., an orthopedic surgeon in Wichita, Kansas, for evaluation, examination and treatment. Dr. Pollock examined claimant's knee and recommended claimant to be an ideal candidate for a CARTICEL autologous chondrocyte implantation (hereinafter referred to as the CARTICEL procedure). This is a relatively new technique. A biopsy is taken of the articular surface of the cartilage in the individual's knee. These cells are then cultured by the Genzyme Company who perfected the procedure. The cells are then re-implanted into the defective areas of the patient's knee. The cells then form articular cartilage similar to the patient's knee cartilage. The first preliminary hearing was held on February 29, 1996 concerning claimant's request for authorization for Dr. Pollock to perform the CARTICEL procedure. No transcript was made of that preliminary hearing. The Administrative Law Judge entered an Order on March 1, 1996 appointing Dr. Stephen W. Munns, a neutral physician, to examine the claimant and offer an opinion on whether claimant was a candidate for the CARTICEL procedure. Another preliminary hearing was held on March 19, 1996, again without a transcript being made of the proceedings. As a result of that hearing, the Administrative Law Judge, in an Order dated March 19, 1996 ordered Dr. Murphy and Dr. Pollock as authorized treating physicians but deferred making a decision on the CARTICEL procedure until Dr. Pollock's deposition was taken. Dr. Munns had declined the appointment to perform an independent medical examination.

Dr. Pollock's deposition was taken on March 21, 1996. The Administrative Law Judge subsequently entered an Order dated April 24, 1996 which is the subject of this appeal. After she reviewed Dr. Pollock's deposition, the Administrative Law Judge authorized Dr. Pollock as claimant's treating physician and to perform the CARTICEL procedure. Respondent was ordered to pay all medical and hospital costs associated with the procedure.

As previously noted, the issue of whether claimant's current need for medical treatment for her left knee injury was raised and decided adverse to the respondent in a preliminary hearing Order entered by the Administrative Law Judge on March 16, 1995. Respondent did not appeal from that decision. Therefore, the Appeals Board finds that the respondent had to have presented new evidence on this issue for the issue now to be reviewed by the Appeals Board. The Appeals Board finds that the only new evidence that has been presented subsequent to the March 7, 1995 preliminary hearing is Dr. Pollock's deposition. The Appeals Board has reviewed Dr. Pollock's deposition and finds it contains no evidence on respondent's contention that claimant's current need for medical treatment is not related to her accident of May 11, 1992.

(2) Respondent also argued that the Administrative Law Judge exceeded her jurisdiction in appointing Dr. Pollock to perform the CARTICEL procedure as reasonable and necessary medical treatment for claimant's left knee injury. The Appeals Board, in numerous previous decisions, has consistently ruled the administrative law judge has

authority to grant or deny medical compensation pursuant to the preliminary hearing statute, pending the conclusion of a full hearing on the claim. K.S.A. 44-534a, as amended by S.B. 649 (1996). The Appeals Board, therefore, finds it does not have jurisdiction to review this issue at this juncture of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated April 24, 1996 should be, and hereby is, affirmed as to issue No. (1) and the respondent's appeal is dismissed for lack of jurisdiction as to issue No. (2).

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: Richard Sanborn, Wichita, KS
Vaughn Burkholder, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director